



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 04829-00

5 October 2000

SSGT [REDACTED] USMC

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 October 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 7 July 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board was unable to find you never received counseling about a loss of checks and balances. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4829-00

IN REPLY REFER TO:
1610
MMER/PERB
7 JUL 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

Ref: (a) SSgt [REDACTED] DD Form 149 of 6 Apr 00
(b) MCO PI610.7D w/Ch 1-3

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 6 July 2000 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970607 to 970916 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report is the result of two issues: first, the discrepancy in his Service Record Book (SRB) pertaining to his Variable Housing Allowance (VHA); and second, a lack of "checks and balances" within his section. To support his appeal, the petitioner furnishes his own detailed statement of the events/circumstances during the reporting period and provides several advocacy letters.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The facts detailing the reasons for the petitioner's relief of duties, as well as the Page 11 SRB entry, can be mentioned in the fitness report. While the petitioner may be dissatisfied with their inclusion in the evaluation, they are nevertheless uncontroverted matters of fact.

b. The petitioner states that he was only observed for 45 days during the reporting period; that he was TAD for a month to the regional softball team. Had his TAD been 30 or more consecutive days, a "TD" report would have been in order. However, by his own admission in his rebuttal to the challenged fitness report, the petitioner was only TAD for 26 days (5-31 July 1997). Hence, no "TD" report was required.

c. While all of the advocacy letters included with reference (a) are complimentary and supportive, the Board must emphasize

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that none of the authors was in the petitioner's direct reporting chain **at the time**; nor were any of those individuals in positions from which to better evaluate the petitioner than were the reporting officials.

d. Although the Reviewing Officer did not concur with some of the assigned marks, it should be pointed out that he nevertheless acknowledged the "serious lapse in judgment" and a "loss of 'checks and balances'."

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps